HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6405 OF 1995.

1.Bhartiya Samrakshan Kamgar
Sangh, Ammunition Factory,
Khadki, Pune 411 003.

2.P. Y. Pimpalkar, 376,
Old Bazar, Khadki, Pune.

3. Sanjay K. Menkundale,
35/37 Juna Tophkhana,
Shivaji Nagar, Opp: Civil
Court, Pune. ..Petitioners.

Versus.

1. State of Maharashtra.
2. The Commissioner for
Profession Tax, Vikrikar
Bhavan, Mazgaon, Bombay 10.
3. The Profession Tax Officer,
Pune City Division,
Jeevan Darshan, 4th Floor,
LIC Bldg. Narayanpeth, Pune-30.
4. The General Manager,
Ammunition Factory,
Khadki, Pune - 411 003.
5. Union of India. ..Respondents.

Shri. N.M.Ganguly for the Petitioners - absent.

Smt. S.S.Bhende, AGP for the Respondent Nos. 1 & 2
-State.

CORAM: S.B.MHASE &
D.G.KARNIK, JJ.

DATE : JANUARY 9, 2006.

Oral Judgment (Per D.G.Karnik,J.):

1. Heard Smt. S. S. Bhende, learned A.G.P. for the respondent Nos. 1 & 2. None present for the petitioners.

2. By this petition, the petitioners challenge the vires of section 27A(a) of the Maharashtra State Tax on Professions, Trades Callings and Employment Act, 1975, as amended by Maharashtra Act XX of 2002 (Hereinafter referred to as "the Act".) as violative of Article 14 of the Constitution of India. In the alternative, the petitioners have prayed that the civilians employed in the Ammunition Factory at Khadaki, Pune are entitled for exemption from payment of professional tax under section 27A(a) of the Act.

3. Petitioner No.1 is a trade union and petitioner Nos. 2 & 3 are its General Secretary and Vice President respectively. Petitioners espouse the cause of the employees employed in the ammunition factory at Khadki.

4. The Legislature of Maharashtra passed an Act called as the Maharashtra State Tax on Professions, Trades Callings and Employments Act, 1975, being Maharashtra Act XVI of 1975, imposing tax on profession, trades callings and employments for raising additional resources needed for implementation of the employment guarantee scheme and to provide for establishing Employment Guarantee Fund and for other

matters connected therewith. Under section 3 of the Act, every person and Hindu Undivided Family engaged actively or otherwise in any profession, trade calling or employment and falling under one or other of the classes mentioned in the second column of schedule-I of the Act is liable to pay to the State Government the tax at the rate mentioned in the Third column of the said schedule.

5. Section 27A was introduced into the Act by an amending Act XXI of 1976 w.e.f. 1st January, 1976.

The Section 27A reads as under:

"**27A. Exemption :-** *Nothing contained in Section 3 and other provision of this Act shall apply to* --

(a) the members of the Forces as defined in the Army Act, 1950 or the Air Force Act, 1950 and the members of the Indian Navy as defined in the Navy Act, 1957 serving in any part of the State and drawing pay and allowances as Army or Air Force or Navy, as the case may be, including the members of auxiliary forces or reservists, or reserve and auxiliary services serving in any part of the State and drawing pay and allowances as such auxiliary forces or reservists, or reserve and auxiliary services as the case may, be under the budgetary allocations of the Defence Services.

Explanation.- It is hereby declared for the removal of doubts that nothing in this clause shall apply or shall be taken to have applied during any period starting on or after the 1st May, 2000 to persons drawing pay and allowances

from the establishments of the Defence Ordnance Factories situated in any part of the State.

Other Clauses being not relevant, are not reproduced."

6. Object of Clause (a) of Section 27-A is to grant exemption to the members of armed forces as defined in the Army Act, 1950 or the Air Force Act, 1950 and the members of the navy as defined in the Navy Act, 1957. Members of the armed forces form a distinct class. They are required to move from place to place and State to State for discharging their duties in connection with the integrity and sovereignty of India. They go to a State not voluntarily, on their own, but on account of being posted in the State by the Central Government for discharging their duties in connection with the affairs of the Union of India- maintaining sovereignity and integrity of India. They go to a State only temporarily and for a period of few months or years and are transferred out thereafter Granting exemption from payment of professional tax to such members under the Act is based on intelligible differentia. There is no reason to hold that the exemption granted to the members of the armed forces is discriminatory. It is well settled that in a matter of taxation the legislature has greater freedom to choose the subjects to be taxed, the manner to tax and the

rate of taxation.

. In any event, we are of the view that if exemption is granted to one class of public, other class of public have no right to say that they should be granted exemption from payment of tax. Therefore, if Clause (a) of Section 27A of the Act is struck down, that would not benefit the petitioners.

7. The Petitioners have also contended that they being employees employed in the Ammunition Factory are the members of the armed forces. No provision of the Army Act, 1950 or Air Force Act, 1950 and Navy Act, 1957, was pointed to us to show that the employees of an ordinance factory would be the members of the armed forces. They are also not the members of the auxiliary forces or reservists or reserved and auxiliary services serving in any part of the State. Petitioners are therefore not members of the Armed Forces. Doubts, if any, as to whether the petitioners are members of the armed forces is clarified by the explanation to clause (a) of Section 27A which is added by Act of LXI of 2000, which reads as under:

> "Explanation.- It is hereby declared for the removal of doubts that nothing in this clause shall apply or shall be

taken to have applied during any period starting on or after the 1st May, 2000 to persons drawing pay and allowances from the establishments of the Defence Ordnance Factories situated in any part of the State."

. Even without the explanation, the position was the same and the explanation was added merely to clarify the existing position.

8. As the petitioners are not covered by Section 27A(a) of the Act, the petitioners are not entitled for an exemption. Thus, the challenge of the petitioners to the vires of the section 27A(a) as also their claim under section 27A(a) fails. Hence petition is dismissed with costs.

(D.G.KARNIK,J.) **(S.B.MHASE, J.)**